JAMES M. CHUDNOW

IBLA 82-46 Decided June 23, 1982

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U 48894.

Affirmed.

1. Oil and Gas Leases: Applications: 640-acre Limitation
No over-the-counter offer for a noncompetitive oil and gas lease on the public domain may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation (or that such plan has been approved as to form by the Director, Geological Survey), or where the land is surrounded by lands not available for leasing; where these circumstances do not exist, an offer for less than 640 acres is properly rejected.

APPEARANCES: James M. Chudnow, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

James M. Chudnow appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated October 7, 1981, rejecting noncompetitive oil and gas lease offer U 48894. This offer was rejected by BLM because it included less than 640 acres of available land. In support of its rejection, BLM cited 43 CFR 3110.1-3(a) which states in relevant part: "No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation * * * or where the land is surrounded by lands not available for leasing under the Act."

Chudnow's offer, filed on May 18, 1981, sought to lease lands in three townships. The combined acreage of lands sought was set forth in the offer

as 652.39 acres. Despite Chudnow's apparent compliance with 43 CFR 3110.1-3(a), BLM rejected this offer because approximately 86 acres in the S 1/2 S 1/2 sec. 36, T. 15 N., R. 18 W., Salt Lake meridian, are not owned by the United States. These 86 acres are designated in the most recent status plat as part of a State grant.

Chudnow maintains that at the time he filed his offer, the then current status plat did not contain a reference to any state grant. A copy of the status plat, dated April 7, 1981, would appear to support Chudnow's claim. Since BLM's rejection of his offer was caused by inaccurate status plats, Chudnow argues, lease U 48894 should issue to him.

[1] Based on acreage figures supplied to this Board by BLM's memorandum of February 10, 1982, 1/ it appears that appellant's offer did not contain 640 acres even if the 86-acre State grant was available for leasing. Using the acreage figures shown on the status plats and provided by BLM, the lands sought by appellant's offer total 618.43 acres, including the 86-acre State grant. Thus, his reliance on BLM's status plats showing the S 1/2 S 1/2 sec. 36 (excluding patents) to be available for leasing did not cause his offer to be rejected. No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation (or such a plan has been approved as to form by the Director of the Geological Survey) or where the land is surrounded by lands not available for leasing under the Act. Douglas R. Willson, 52 IBLA 246 (1981).

Even if BLM's incorrect status plat had caused the rejection of appellant's offer, it is well settled that reliance upon erroneous notations in Federal land records cannot create any rights not authorized by law. See, e.g., Paul S. Coupey, 64 IBLA 146 (1982); Alver C. Duncan, 39 IBLA 144 (1979); Hudson Investment Co., 17 IBLA 146, 88 I.D. 533 (1974); Violet Goresen, A-28289 (June 8, 1960); 43 CFR 1810.3. Examination of the historical index for T. 15 N., R. 18 W., confirms BLM's statement that sec. 36 was included in a grant to the State of Utah. It further appears from current status plats that there exist other contiguous lands available for leasing which appellant could have included in his offer.

While the statement that the Government is not subject to the equitable defense of estoppel is no longer absolute, United States v. Ruby Co., 588 F.2d 697, 701-02 (9th Cir. 1978), cert. denied, 442 U.S. 917 (1979), appellant does not allege such affirmative misconduct by BLM or detrimental reliance as to invoke the defense of estoppel. See, e.g., United States v. Ruby Co., supra, and Lowey v. Watt, 517 F. Supp. 137, 143-44 (D.D.C. 1981).

1/ BLM's file copy shows that a copy of this Feb. 10 memorandum was also mailed to appellant.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Gail M. Frazier
Administrative Judge